IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO.502 OF 2007

In

EXHIBIT - 5 AND EXHIBIT - 73

In

SPL. CIVIL SUIT NO.658 OF 2006

M/s.Mangalmurti Properties : Appellant
(Orig.Plaintiff)

V/s.

Khwajapeer Sayyed Hissan Uddin
Qati-E-Sanjani Chistee Alias Thorla
Shaikh Sallah Darga & Ors. : Respondents
(Orig.Defendants)

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Mr.R.V.Pai i/b. Mrs.Bina R. Pai for the appellant.

Mr.Y.H.Muchhala with Ms Hansaq I. Advani, Mr.Farooq A. Chaudhary and Mr.Kazi Sayed Hafizuddin i/b. Mr.Sagheer A. Khan for respondent nos.1(a), 1(b) & 1(c).

Mr.R.Dada with Mr.N.V.Walawalkar i/b. Mr.G.S.Godbole for respondent nos.2 to 4.

Mr.R.V.Govilkar for respondent no.5.

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CORAM : S.A.BOBDE, J.

DATE : JULY 4, 2007.

P.C.

1. After having heard the matter for sometime, it seems expedient, in the interest of justice, to pass the following order:-

O R D E R

(i) Mr.Pai, the learned counsel for the appellant, points out that the appellant seeks an injunction restraining the opponent-Bank from creating any third-party rights in respect of the T.D.R. claimed by the appellant in pursuance of the sale notice or otherwise. Having perused the sale notice at exh.'1', it is clear that the notice for sale is in respect of certain shares pledged in favour of the opponent-Bank. Mr.Govilkar, the learned counsel for the Bank, states that the shares have been pledged by Mr.Agashe who is a shareholder of the respondent no.3, Sinew Developers Ltd. Thus, the prayer, in effect, seeks an injunction restraining the Bank from giving effect to the notice of sale of shares on the assumption that thereby the shares will adversely affect the rights in respect of T.D.R. which the respondent no.3, Sinew Developers Ltd. has

acquired under the consent decree which is challenged by the appellant in the suit.

(ii) It seems clear at this stage that the connection between the appellant and the sale of the proposed share by the Bank is remote. The appellant has a claim in respect of the T.D.R. over survey no.44. There is a dispute as to who has the right over T.D.R. It appears that one of the rival claimants to the T.D.R. is the respondent no.3, Sinew Developers Ltd. Mr.Agashe who owns shares in that company has pledged his shares with the Bank. It is, therefore, not possible to accede to the prayer of the appellant that the opponent-Bank be restrained from dealing with the shares which are pledged to it on the ground that their sale would affect somehow the T.D.R. in dispute.

(iii) It must be noted that the Bank has not been a party to the suit or injunction application when the injunction application was heard by the trial Court. In the circumstances, it would be appropriate to remand the matter back to the trial Court for a fresh decision on the injunction application, in accordance with law, after impleading the Bank as a party. None of the

parties before me has any objection to this course.. In the circumstances, it would be appropriate, in the interest of justice, to remand the matter back to the trial Court for a fresh decision on the injunction application with reference to the rights of the Bank which is to be impleaded now. It is made clear that the order in appeal shall remain as it is. However, without prejudice to the rights of the appellant, to challenge the said order, if so advised, at a later stage after the decision by the trial Court in respect of the injunction application with regard to the Bank and the notice dated 13.6.2007. Order accordingly.

(iv) The matter shall be decided by the trial Court afresh on its own merits. It is further made clear that Shree Suvarna Sahakari Bank Ltd. shall be joined as a defendant in Civil Suit No.658 of 2006. The Bank is directed to appear before the trial Court on the next date in the suit.

2. The appeal stands disposed of.

3. In view of the disposal of the appeal, the Civil Applications do not survive and the same stand disposed

of.

S.A. BOBDE, J.